

AMENDED IN SENATE JUNE 30, 2016

AMENDED IN SENATE JUNE 20, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2912**

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### **Introduced by Committee on Natural Resources**

March 15, 2016

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An act to amend Section 5654 of the Fish and Game Code, and to amend Sections 8670.3, 8670.25.5, 8670.27, 8670.29, 8670.31, 8670.37.58, 8670.54, 8670.56.5, 8670.56.6, and 8670.59 of the Government Code, relating to oil spills.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2912, as amended, Committee on Natural Resources. Oil spills.

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup. The act requires each owner or operator of a tank vessel, nontank vessel carrying oil as a secondary cargo, or facility to submit, upon request of the administrator, a copy of a federally approved oil spill response plan at the time of approval of the plan.

This bill would instead require each owner or operator of a tank vessel, nontank vessel, vessel carrying oil as a secondary cargo, or facility to submit, upon request of the administrator, a copy of a federally approved oil spill response plan at the time of approval of the plan. The bill also would revise and add various definitions within the act and would make nonsubstantive changes to these and other provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 5654 of the Fish and Game Code is  
2 amended to read:

3 5654. (a) (1) Notwithstanding Section 7715 and except as  
4 provided in paragraph (2), the director, within 24 hours of  
5 notification of a spill or discharge, as those terms are defined in  
6 Section 8670.3 of the Government Code, where any fishing,  
7 including all commercial, recreational, and nonlicensed subsistence  
8 fishing, may take place, or where aquaculture operations are taking  
9 place, shall close to the take of all fish and shellfish all waters in  
10 the vicinity of the spill or discharge or where the spilled or  
11 discharged material has spread, or is likely to spread. In  
12 determining where a spill or discharge is likely to spread, the  
13 director shall consult with the Administrator of the Office of Spill  
14 Prevention and Response. At the time of closure, the department  
15 shall make all reasonable efforts to notify the public of the closure,  
16 including notification to commercial and recreational fishing  
17 organizations, and posting of warnings on public piers and other  
18 locations where subsistence fishing is known to occur. The  
19 department shall coordinate, when possible, with local and regional  
20 agencies and organizations to expedite public notification.

21 (2) Closure pursuant to paragraph (1) is not required if, within  
22 24 hours of notification of a spill or discharge, the Office of  
23 Environmental Health Hazard Assessment finds that a public health  
24 threat does not or is unlikely to exist.

25 (b) Within 48 hours of notification of a spill or discharge subject  
26 to subdivision (a), the director, in consultation with the Office of  
27 Environmental Health Hazard Assessment, shall make an  
28 assessment and determine all of the following:

29 (1) The danger posed to the public from fishing in the area where  
30 the spill or discharge occurred or spread, and the danger of  
31 consuming fish taken in the area where the spill or discharge  
32 occurred or spread.

33 (2) Whether the areas closed for the take of fish or shellfish  
34 should be expanded to prevent any potential take or consumption

1 of any fish or shellfish that may have been contaminated by the  
2 spill or discharge.

3 (3) The likely period for maintaining a closure on the take of  
4 fish and shellfish in order to prevent any possible contaminated  
5 fish or shellfish from being taken or consumed or other threats to  
6 human health.

7 (c) Within 48 hours after receiving notification of a spill or  
8 discharge subject to subdivision (a), or as soon as is feasible, the  
9 director, in consultation with the Office of Environmental Health  
10 Hazard Assessment, shall assess and determine the potential danger  
11 from consuming fish that have been contained in a recirculating  
12 seawater tank onboard a vessel that may become contaminated by  
13 the vessel's movement through an area where the spill or discharge  
14 occurred or spread.

15 (d) If the director finds in his or her assessment pursuant to  
16 subdivision (b) that there is no significant risk to the public or to  
17 the fisheries, the director may immediately reopen the closed area  
18 and waive the testing requirements of subdivisions (e) and (f).

19 (e) Except under the conditions specified in subdivision (d),  
20 after complying with subdivisions (a) and (b), the director, in  
21 consultation with the Office of Environmental Health Hazard  
22 Assessment, but in no event more than seven days from the  
23 notification of the spill or discharge, shall order expedited tests of  
24 fish and shellfish that would have been open for take for  
25 commercial, recreational, or subsistence purposes in the closed  
26 area if not for the closure, to determine the levels of contamination,  
27 if any, and whether the fish or shellfish is safe for human  
28 consumption.

29 (f) (1) Within 24 hours of receiving a notification from the  
30 Office of Environmental Health Hazard Assessment that no threat  
31 to human health exists from the spill or discharge or that no  
32 contaminant from the spill or discharge is present that could  
33 contaminate fish or shellfish, the director shall reopen the areas  
34 closed pursuant to this section. The director may maintain a closure  
35 in any remaining portion of the closed area where the Office of  
36 Environmental Health Hazard Assessment finds contamination  
37 from the spill or discharge persists that may adversely affect human  
38 health.

39 (2) The director, in consultation with the commission, may also  
40 maintain a closure in any remaining portion of the closed area

1 where commercial fishing or aquaculture occurs and where the  
2 department determines, pursuant to this paragraph, that  
3 contamination from the spill or discharge persists that may cause  
4 the waste of commercial fish or shellfish as regulated by Section  
5 7701.

6 (g) To the extent feasible, the director shall consult with  
7 representatives of commercial and recreational fishing associations  
8 and subsistence fishing communities regarding the extent and  
9 duration of a closure, testing protocols, and findings. If a spill or  
10 discharge occurs within the lands governed by a Native American  
11 tribe or affects waters flowing through tribal lands, or tribal  
12 fisheries, the director shall consult with the affected tribal  
13 governments.

14 (h) The director shall seek full reimbursement from the  
15 responsible party or parties for the spill or discharge for all  
16 reasonable costs incurred by the department in carrying out this  
17 section, including, but not limited to, all testing.

18 SEC. 2. Section 8670.3 of the Government Code is amended  
19 to read:

20 8670.3. Unless the context requires otherwise, the following  
21 definitions shall govern the construction of this chapter:

22 (a) "Administrator" means the administrator for oil spill response  
23 appointed by the Governor pursuant to Section 8670.4.

24 (b) (1) "Best achievable protection" means the highest level of  
25 protection that can be achieved through both the use of the best  
26 achievable technology and those manpower levels, training  
27 procedures, and operational methods that provide the greatest  
28 degree of protection achievable. The administrator's determination  
29 of which measures provide the best achievable protection shall be  
30 guided by the critical need to protect valuable natural resources  
31 and state waters, while also considering all of the following:

32 (A) The protection provided by the measure.

33 (B) The technological achievability of the measure.

34 (C) The cost of the measure.

35 (2) The administrator shall not use a cost-benefit or  
36 cost-effectiveness analysis or any particular method of analysis in  
37 determining which measures provide the best achievable protection.  
38 The administrator shall instead, when determining which measures  
39 provide best achievable protection, give reasonable consideration  
40 to the protection provided by the measures, the technological

1 achievability of the measures, and the cost of the measures when  
2 establishing the requirements to provide the best achievable  
3 protection for the natural resources of the state.

4 (c) (1) “Best achievable technology” means that technology  
5 that provides the greatest degree of protection, taking into  
6 consideration both of the following:

7 (A) Processes that are being developed, or could feasibly be  
8 developed anywhere in the world, given overall reasonable  
9 expenditures on research and development.

10 (B) Processes that are currently in use anywhere in the world.

11 (2) In determining what is the best achievable technology  
12 pursuant to this chapter, the administrator shall consider the  
13 effectiveness and engineering feasibility of the technology.

14 (d) “California oil spill contingency plan” means the California  
15 oil spill contingency plan prepared pursuant to Article 3.5  
16 (commencing with Section 8574.1) of Chapter 7.

17 (e) “Dedicated response resources” means equipment and  
18 personnel committed solely to oil spill response, containment, and  
19 cleanup that are not used for any other activity that would adversely  
20 affect the ability of that equipment and personnel to provide oil  
21 spill response services in the timeframes for which the equipment  
22 and personnel are rated.

23 (f) “Environmentally sensitive area” means an area defined  
24 pursuant to the applicable area contingency plans or geographic  
25 response plans, as created and revised by the Coast Guard, the  
26 United States Environmental Protection Agency, and the  
27 administrator.

28 (g) (1) “Facility” means any of the following located in state  
29 waters or located where an oil spill may impact state waters:

30 (A) A building, structure, installation, or equipment used in oil  
31 exploration, oil well drilling operations, oil production, oil refining,  
32 oil storage, oil gathering, oil processing, oil transfer, oil  
33 distribution, or oil transportation.

34 (B) A marine terminal.

35 (C) A pipeline that transports oil.

36 (D) A railroad that transports oil as cargo.

37 (E) A drill ship, semisubmersible drilling platform, jack-up type  
38 drilling rig, or any other floating or temporary drilling platform.

39 (2) “Facility” does not include any of the following:

1 (A) A vessel, except a vessel located and used for any purpose  
2 described in subparagraph (E) of paragraph (1).

3 (B) An owner or operator subject to Chapter 6.67 (commencing  
4 with Section 25270) or Chapter 6.75 (commencing with Section  
5 25299.10) of Division 20 of the Health and Safety Code.

6 (C) Operations on a farm, nursery, logging site, or construction  
7 site that are either of the following:

8 (i) Do not exceed 20,000 gallons in a single storage tank.

9 (ii) Have a useable tank storage capacity not exceeding 75,000  
10 gallons.

11 (D) A small craft refueling dock.

12 (h) "Local government" means a chartered or general law city,  
13 a chartered or general law county, or a city and county.

14 (i) (1) "Marine terminal" means any facility used for  
15 transferring oil to or from a tank ship or tank barge.

16 (2) "Marine terminal" includes, for purposes of this chapter, all  
17 piping not integrally connected to a tank facility, as defined in  
18 subdivision (n) of Section 25270.2 of the Health and Safety Code.

19 (j) "Marine waters" means those waters subject to tidal  
20 influence, and includes the waterways used for waterborne  
21 commercial vessel traffic to the Port of Sacramento and the Port  
22 of Stockton.

23 (k) "Mobile transfer unit" means a vehicle, truck, or trailer,  
24 including all connecting hoses and piping, used for the transferring  
25 of oil at a location where a discharge could impact waters of the  
26 state.

27 (l) "Nondedicated response resources" means those response  
28 resources identified by an Oil Spill Response Organization for oil  
29 spill response activities that are not dedicated response resources.

30 (m) "Nonpersistent oil" means a petroleum-based oil, such as  
31 gasoline or jet fuel, that evaporates relatively quickly and is an oil  
32 with hydrocarbon fractions, at least 50 percent of which, by  
33 volume, distills at a temperature of 645 degrees Fahrenheit, and  
34 at least 95 percent of which, by volume, distills at a temperature  
35 of 700 degrees Fahrenheit.

36 (n) "Nontank vessel" means a vessel of 300 gross tons or greater  
37 that carries oil, but does not carry that oil as cargo.

38 (o) "Oil" means any kind of petroleum, liquid hydrocarbons,  
39 or petroleum products or any fraction or residues therefrom,  
40 including, but not limited to, crude oil, bunker fuel, gasoline, diesel

1 fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and  
2 liquid distillates from unprocessed natural gas.

3 (p) “Oil spill cleanup agent” means a chemical, or any other  
4 substance, used for removing, dispersing, or otherwise cleaning  
5 up oil or any residual products of petroleum in, or on, any of the  
6 waters of the state.

7 (q) “Oil spill contingency plan” or “contingency plan” means  
8 the oil spill contingency plan required pursuant to Article 5  
9 (commencing with Section 8670.28).

10 (r) (1) “Oil spill response organization” or “OSRO” means an  
11 individual, organization, association, cooperative, or other entity  
12 that provides, or intends to provide, equipment, personnel, supplies,  
13 or other services directly related to oil spill containment, cleanup,  
14 or removal activities.

15 (2) “OSRO” does not include an owner or operator with an oil  
16 spill contingency plan approved by the administrator or an entity  
17 that only provides spill management services, or who provides  
18 services or equipment that are only ancillary to containment,  
19 cleanup, or removal activities.

20 (s) (1) “Owner” or “operator” means any of the following:

21 (A) In the case of a vessel, a person who owns, has an ownership  
22 interest in, operates, charters by demise, or leases the vessel.

23 (B) In the case of a facility, a person who owns, has an  
24 ownership interest in, or operates the facility.

25 (C) Except as provided in subparagraph (D), in the case of a  
26 vessel or facility, where title or control was conveyed due to  
27 bankruptcy, foreclosure, tax delinquency, abandonment, or similar  
28 means to an entity of state or local government, a person who  
29 owned, held an ownership interest in, operated, or otherwise  
30 controlled activities concerning the vessel or facility immediately  
31 beforehand.

32 (D) An entity of the state or local government that acquired  
33 ownership or control of a vessel or facility, when the entity of the  
34 state or local government has caused or contributed to a spill or  
35 discharge of oil into waters of the state.

36 (2) “Owner” or “operator” does not include a person who,  
37 without participating in the management of a vessel or facility,  
38 holds indicia of ownership primarily to protect the person’s security  
39 interest in the vessel or facility.

1 (3) “Operator” does not include a person who owns the land  
2 underlying a facility or the facility itself if the person is not  
3 involved in the operations of the facility.

4 (t) “Person” means an individual, trust, firm, joint stock  
5 company, or corporation, including, but not limited to, a  
6 government corporation, partnership, and association. “Person”  
7 also includes a city, county, city and county, district, and the state  
8 or any department or agency thereof, and the federal government,  
9 or any department or agency thereof, to the extent permitted by  
10 law.

11 (u) “Pipeline” means a pipeline used at any time to transport  
12 oil.

13 (v) “Railroad” means a railroad, railway, rail car, rolling stock,  
14 or train.

15 (w) “Rated OSRO” means an OSRO that has received a  
16 satisfactory rating from the administrator for a particular rating  
17 level established pursuant to Section 8670.30.

18 (x) “Response efforts” means rendering care, assistance, or  
19 advice in accordance with the National Contingency Plan, the  
20 California oil spill contingency plan, or at the direction of the  
21 administrator, the United States Environmental Protection Agency,  
22 or the United States Coast Guard in response to a spill or a  
23 threatened spill into waters of the state.

24 (y) “Responsible party” or “party responsible” means any of  
25 the following:

26 (1) The owner or transporter of oil or a person or entity accepting  
27 responsibility for the oil.

28 (2) The owner, operator, or lessee of, or a person that charters  
29 by demise, a vessel or facility, or a person or entity accepting  
30 responsibility for the vessel or facility.

31 (z) “Small craft” means a vessel, other than a tank ship or tank  
32 barge, that is less than 20 meters in length.

33 (aa) “Small craft refueling dock” means a waterside operation  
34 that dispenses only nonpersistent oil in bulk and small amounts of  
35 persistent lubrication oil in containers primarily to small craft and  
36 meets both of the following criteria:

37 (1) Has tank storage capacity not exceeding 20,000 gallons in  
38 any single storage tank or tank compartment.

39 (2) Has total usable tank storage capacity not exceeding 75,000  
40 gallons.



(ab) “Small marine fueling facility” means either of the following:

(1) A mobile transfer unit.

(2) A fixed facility that is not a marine terminal, that dispenses primarily nonpersistent oil, that may dispense small amounts of persistent oil, primarily to small craft, and that meets all of the following criteria:

(A) Has tank storage capacity greater than 20,000 gallons but not more than 40,000 gallons in any single storage tank or storage tank compartment.

(B) Has total usable tank storage capacity not exceeding 75,000 gallons.

(C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.

(ac) “Spill,” “discharge,” or “oil spill” means a release of any amount of oil into waters of the state that is not authorized by a federal, state, or local government entity.

(ad) “Tank barge” means a vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(ae) “Tank ship” means a self-propelled vessel that is constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(af) “Tank vessel” means a tank ship or tank barge.

(ag) “Vessel” means a watercraft or ship of any kind, including every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

(ah) “Vessel carrying oil as secondary cargo” means a vessel that does not carry oil as a primary cargo, but does carry oil as cargo. The administrator may establish minimum oil volume amounts or other criteria by regulations.

(ai) “Waters of the state” or “state waters” means any surface water, including saline waters, marine waters, and freshwaters, within the boundaries of the state but does not include groundwater.

SEC. 3. Section 8670.25.5 of the Government Code is amended to read:

8670.25.5. (a) (1) Without regard to intent or negligence, any party responsible for the discharge or threatened discharge of oil in waters of the state shall report the discharge immediately to the

1 Office of Emergency Services pursuant to Section 25510 of the  
2 Health and Safety Code.

3 (2) If the information initially reported pursuant to paragraph  
4 (1) was inaccurate or incomplete, or if the quantity of oil discharged  
5 has changed, any party responsible for the discharge or threatened  
6 discharge of oil in waters of the state shall report the updated  
7 information immediately to the Office of Emergency Services  
8 pursuant to paragraph (1). The report shall contain the accurate or  
9 complete information, or the revised quantity of oil discharged.

10 (b) Immediately upon receiving notification pursuant to  
11 subdivision (a), the Office of Emergency Services shall notify the  
12 administrator, the State Lands Commission, the California Coastal  
13 Commission, the California regional water quality control board  
14 having jurisdiction over the location of the discharged oil, and the  
15 appropriate local governmental agencies in the area surrounding  
16 the discharged oil, and take the actions required by subdivision  
17 (d) of Section 8589.7. If the spill has occurred within the  
18 jurisdiction of the San Francisco Bay Conservation and  
19 Development Commission, the Office of Emergency Services shall  
20 notify that commission. Each public agency specified in this  
21 subdivision shall adopt an internal protocol over communications  
22 regarding the discharge of oil and file the internal protocol with  
23 the Office of Emergency Services.

24 (c) The 24-hour emergency telephone number of the Office of  
25 Emergency Services shall be posted at every railroad dispatch,  
26 pipeline operator control center, marine terminal, area of control  
27 of every other facility, and on the bridge of every tank ship in  
28 marine waters.

29 (d) Except as otherwise provided in this section and Section  
30 8589.7, a notification made pursuant to this section shall satisfy  
31 any immediate notification requirement contained in any permit  
32 issued by a permitting agency.

33 SEC. 4. Section 8670.27 of the Government Code is amended  
34 to read:

35 8670.27. (a) (1) All potentially responsible parties for an oil  
36 spill and all of their agents and employees and all state and local  
37 agencies shall carry out response and cleanup operations in  
38 accordance with the applicable contingency plan, unless directed  
39 otherwise by the administrator, the United States Coast Guard, or  
40 the United States Environmental Protection Agency.

1 (2) Except as provided in subdivision (b), the responsible party,  
2 potentially responsible parties, their agents and employees, the  
3 operators of all vessels docked at a marine facility that is the source  
4 of a discharge, and all state and local agencies shall carry out spill  
5 response consistent with the California oil spill contingency plan  
6 or other applicable federal, state, or local spill response plans, and  
7 owners and operators shall carry out spill response consistent with  
8 their applicable response contingency plans, unless directed  
9 otherwise by the administrator, the United States Coast Guard, or  
10 the United States Environmental Protection Agency.

11 (b) If a responsible party or potentially responsible party  
12 reasonably, and in good faith, believes that the directions or orders  
13 given by the administrator pursuant to subdivision (a) will  
14 substantially endanger the public safety or the environment, the  
15 party may refuse to act in compliance with the orders or directions  
16 of the administrator. The responsible party or potentially  
17 responsible party shall state, at the time of the refusal, the reasons  
18 why the party refuses to follow the orders or directions of the  
19 administrator. The responsible party or potentially responsible  
20 party shall give the administrator written notice of the reasons for  
21 the refusal within 48 hours of refusing to follow the orders or  
22 directions of the administrator. In any civil or criminal proceeding  
23 commenced pursuant to this section, the burden of proof shall be  
24 on the responsible party or potentially responsible party to  
25 demonstrate, by clear and convincing evidence, why the refusal  
26 to follow the orders or directions of the administrator was justified  
27 under the circumstances.

28 SEC. 5. Section 8670.29 of the Government Code is amended  
29 to read:

30 8670.29. (a) In accordance with the rules, regulations, and  
31 policies established by the administrator pursuant to Section  
32 8670.28, an owner or operator of a facility, small marine fueling  
33 facility, or mobile transfer unit, or an owner or operator of a tank  
34 vessel, nontank vessel, or vessel carrying oil as secondary cargo,  
35 while operating in the waters of the state or where a spill could  
36 impact waters of the state, shall have an oil spill contingency plan  
37 that has been submitted to, and approved by, the administrator  
38 pursuant to Section 8670.31. An oil spill contingency plan shall  
39 ensure the undertaking of prompt and adequate response and  
40 removal action in case of a spill, shall be consistent with the

1 California oil spill contingency plan, and shall not conflict with  
2 the National Oil and Hazardous Substances Pollution Contingency  
3 Plan (NCP).

4 (b) An oil spill contingency plan shall, at a minimum, meet all  
5 of the following requirements:

6 (1) Be a written document, reviewed for feasibility and  
7 executability, and signed by the owner or operator, or his or her  
8 designee.

9 (2) Provide for the use of a recognized incident command system  
10 to be used during a spill.

11 (3) Provide procedures for reporting oil spills to local, state,  
12 and federal agencies, and include a list of contacts to call in the  
13 event of a drill, threatened spill, or spill.

14 (4) Describe the communication plans to be used during a spill,  
15 if different from those used by a recognized incident command  
16 system.

17 (5) Describe the strategies for the protection of environmentally  
18 sensitive areas.

19 (6) Identify at least one rated OSRO for each rating level  
20 established pursuant to Section 8670.30. Each identified rated  
21 OSRO shall be directly responsible by contract, agreement, or  
22 other approved means to provide oil spill response activities  
23 pursuant to the oil spill contingency plan. A rated OSRO may  
24 provide oil spill response activities individually, or in combination  
25 with another rated OSRO, for a particular owner or operator.

26 (7) Identify a qualified individual.

27 (8) Provide the name, address, and telephone and facsimile  
28 numbers for an agent for service of process, located within the  
29 state and designated to receive legal documents on behalf of the  
30 owner or operator.

31 (9) Provide for training and drills on elements of the plan at  
32 least annually, with all elements of the plan subject to a drill at  
33 least once every three years.

34 (c) An oil spill contingency plan for a vessel shall also include,  
35 but is not limited to, all of the following requirements:

36 (1) The plan shall be submitted to the administrator at least  
37 seven days prior to the vessel entering waters of the state.

38 (2) The plan shall provide evidence of compliance with the  
39 International Safety Management Code, established by the  
40 International Maritime Organization, as applicable.

1 (3) If the oil spill contingency plan is for a tank vessel, the plan  
2 shall include both of the following:

3 (A) The plan shall specify oil and petroleum cargo capacity.

4 (B) The plan shall specify the types of oil and petroleum cargo  
5 carried.

6 (4) If the oil spill contingency plan is for a nontank vessel, the  
7 plan shall include both of the following:

8 (A) The plan shall specify the type and total amount of fuel  
9 carried.

10 (B) The plan shall specify the capacity of the largest fuel tank.

11 (d) An oil spill contingency plan for a facility shall also include,  
12 but is not limited to, all of the following provisions, as appropriate:

13 (1) Provisions for site security and control.

14 (2) Provisions for emergency medical treatment and first aid.

15 (3) Provisions for safety training, as required by state and federal  
16 safety laws for all personnel likely to be engaged in oil spill  
17 response.

18 (4) Provisions detailing site layout and locations of  
19 environmentally sensitive areas requiring special protection.

20 (5) Provisions for vessels that are in the operational control of  
21 the facility for loading and unloading.

22 (e) Unless preempted by federal law or regulations, an oil spill  
23 contingency plan for a railroad also shall include, but is not limited  
24 to, all of the following:

25 (1) A list of the types of train cars that may make up the consist.

26 (2) A list of the types of oil and petroleum products that may  
27 be transported.

28 (3) A map of track routes and facilities.

29 (4) A list, description, and map of any prestaged spill response  
30 equipment and personnel for deployment of the equipment.

31 (f) The oil spill contingency plan shall be available to response  
32 personnel and to relevant state and federal agencies for inspection  
33 and review.

34 (g) The oil spill contingency plan shall be reviewed periodically  
35 and updated as necessary. All updates shall be submitted to the  
36 administrator pursuant to this article.

37 (h) In addition to the regulations adopted pursuant to Section  
38 8670.28, the administrator shall adopt regulations and guidelines  
39 to implement this section. The regulations and guidelines shall  
40 provide for the best achievable protection of waters and natural

resources of the state. The administrator may establish additional oil spill contingency plan requirements, including, but not limited to, requirements based on the different geographic regions of the state. All regulations and guidelines shall be developed in consultation with the Oil Spill Technical Advisory Committee.

(i) Notwithstanding subdivision (a) and paragraph (6) of subdivision (b), a vessel or facility operating where a spill could impact state waters that are not tidally influenced shall identify a rated OSRO in the contingency plan no later than January 1, 2016.

SEC. 6. Section 8670.31 of the Government Code is amended to read:

8670.31. (a) Each oil spill contingency plan required under this article shall be submitted to the administrator for review and approval.

(b) The administrator shall review each submitted contingency plan to determine whether it complies with the administrator's rules, policies, and regulations adopted pursuant to Sections 8670.28 and 8670.29. The administrator may issue a preliminary approval pending final approval or disapproval.

(c) Each contingency plan submitted shall be approved or disapproved within 30 days after receipt by the administrator. The administrator may approve or disapprove portions of a plan. A plan is not deemed approved until all portions are approved pursuant to this section. The disapproved portion shall be subject to the procedures contained in subdivision (d).

(d) If the administrator finds the submitted contingency plan is inadequate under the rules, policies, and regulations of the administrator, the plan shall be returned to the submitter with written reasons why the plan was found inadequate and, if practicable, suggested modifications or alternatives, if appropriate. The submitter shall submit a new or modified plan within 30 days after the earlier plan was returned, responding to the findings and incorporating any suggested modifications. The resubmittal shall be treated as a new submittal and processed according to the provisions of this section, except that the resubmitted plan shall be deemed approved unless the administrator acts pursuant to subdivision (c).

(e) The administrator may make inspections and require drills of any oil spill contingency plan that is submitted.

1 (f) After the plan has been approved, it shall be resubmitted  
2 every five years thereafter. The administrator may require earlier  
3 or more frequent resubmission, if warranted. Circumstances that  
4 would require an earlier resubmission include, but are not limited  
5 to, changes in regulations, new oil spill response technologies,  
6 deficiencies identified in the evaluation conducted pursuant to  
7 Section 8670.19, or a need for a different oil spill response because  
8 of increased need to protect endangered species habitat. The  
9 administrator may deny approval of the resubmitted plan if it is  
10 no longer considered adequate according to the adopted rules,  
11 regulations, and policies of the administrator at the time of  
12 resubmission.

13 (g) Each owner or operator of a tank vessel, nontank vessel,  
14 vessel carrying oil as a secondary cargo, or facility who is required  
15 to file an oil spill response plan or update pursuant to provisions  
16 of federal law regulating oil spill response plans shall submit, for  
17 informational purposes only and upon request of the administrator,  
18 a copy of that plan or update to the administrator at the time that  
19 it is approved by the relevant federal agency.

20 SEC. 7. Section 8670.37.58 of the Government Code is  
21 amended to read:

22 8670.37.58. (a) A nontank vessel shall not enter waters of the  
23 state unless the nontank vessel owner or operator has provided to  
24 the administrator evidence of financial responsibility that  
25 demonstrates, to the administrator's satisfaction, the ability to pay  
26 at least three hundred million dollars (\$300,000,000) to cover  
27 damages caused by a spill, and the owner or operator of the nontank  
28 vessel has obtained a certificate of financial responsibility from  
29 the administrator for the nontank vessel.

30 (b) Notwithstanding subdivision (a), the administrator may  
31 establish a lower standard of financial responsibility for a nontank  
32 vessel that has a carrying capacity of 6,500 barrels of oil or less,  
33 or for a nontank vessel that is owned and operated by California  
34 or a federal agency and has a carrying capacity of 7,500 barrels of  
35 oil or less. The standard shall be based upon the quantity of oil  
36 that can be carried by the nontank vessel and the risk of an oil spill  
37 into waters of the state. The administrator shall not set a standard  
38 that is less than the expected cleanup costs and damages from an  
39 oil spill into waters of the state.

1 (c) A nontank vessel fee shall be submitted along with the  
2 application for the certificate, as required pursuant to Section  
3 8670.41.

4 (d) The administrator may adopt regulations to implement this  
5 section.

6 SEC. 8. Section 8670.54 of the Government Code is amended  
7 to read:

8 8670.54. (a) The Oil Spill Technical Advisory Committee,  
9 hereafter in this article, the committee, is hereby established to  
10 provide public input and independent judgment of the actions of  
11 the administrator. The committee shall consist of 14 members, of  
12 whom eight shall be appointed by the Governor, three by the  
13 Speaker of the Assembly, and three by the Senate Committee on  
14 Rules. The appointments shall be made in the following manner:

15 (1) The Speaker of the Assembly and Senate Committee on  
16 Rules shall each appoint a member who shall be a representative  
17 of the public.

18 (2) The Governor shall appoint a member who has a  
19 demonstrable knowledge of marine transportation.

20 (3) The Speaker of the Assembly and the Senate Committee on  
21 Rules shall each appoint two members who have demonstrable  
22 knowledge of environmental protection and the study of  
23 ecosystems.

24 (4) The Governor shall appoint a member who has served as a  
25 local government elected official or who has worked for a local  
26 government.

27 (5) The Governor shall appoint a member who has experience  
28 in oil spill response and prevention programs.

29 (6) The Governor shall appoint a member who has been  
30 employed in the petroleum industry.

31 (7) The Governor shall appoint a member who has worked in  
32 state government.

33 (8) The Governor shall appoint a member who has demonstrable  
34 knowledge of the dry cargo vessel industry.

35 (9) The Governor shall appoint a member who has demonstrable  
36 knowledge of the railroad industry.

37 (10) The Governor shall appoint a member who has  
38 demonstrable knowledge of the oil production industry.

39 (b) The committee shall meet as often as required, but at least  
40 twice per year. Members shall be paid one hundred dollars (\$100)



1 per day for each meeting and all necessary travel expenses at state  
2 per diem rates.

3 (c) The administrator and any personnel the administrator  
4 determines to be appropriate shall serve as staff to the committee.

5 (d) A chair and vice chair shall be elected by a majority vote of  
6 the committee.

7 SEC. 9. Section 8670.56.5 of the Government Code is amended  
8 to read:

9 8670.56.5. (a) A responsible party, as defined in Section  
10 8670.3, shall be absolutely liable without regard to fault for any  
11 damages incurred by any injured person that arise out of, or are  
12 caused by, a spill.

13 (b) A responsible party is not liable to an injured person under  
14 this section for any of the following:

15 (1) Damages, other than costs of removal incurred by the state  
16 or a local government, caused solely by any act of war, hostilities,  
17 civil war, or insurrection or by an unanticipated grave natural  
18 disaster or other act of God of an exceptional, inevitable, and  
19 irresistible character, that could not have been prevented or avoided  
20 by the exercise of due care or foresight.

21 (2) Damages caused solely by the negligence or intentional  
22 malfeasance of that injured person.

23 (3) Damages caused solely by the criminal act of a third party  
24 other than the defendant or an agent or employee of the defendant.

25 (4) Natural seepage not caused by a responsible party.

26 (5) Discharge or leaking of oil or natural gas from a private  
27 pleasure boat or vessel.

28 (6) Damages that arise out of, or are caused by, a discharge that  
29 is authorized by a state or federal permit.

30 (c) The defenses provided in subdivision (b) shall not be  
31 available to a responsible party who fails to comply with Sections  
32 8670.25, 8670.25.5, 8670.27, and 8670.62.

33 (d) Upon motion and sufficient showing by a party deemed to  
34 be a responsible party under this section, the court shall join to the  
35 action any other party who may be a responsible party under this  
36 section.

37 (e) In determining whether a party is a responsible party under  
38 this section, the court shall consider the results of chemical or other  
39 scientific tests conducted to determine whether oil or other  
40 substances produced, discharged, or controlled by the defendant

1 matches the oil or other substance that caused the damage to the  
2 injured ~~person~~ *party*. The defendant shall have the burden of  
3 producing the results of tests of samples of the substance that  
4 caused the injury and of substances for which the defendant is  
5 responsible, unless it is not possible to conduct the tests because  
6 of unavailability of samples to test or because the substance is not  
7 one for which reliable tests have been developed. At the request  
8 of a party, any other party shall provide samples of oil or other  
9 substances within its possession or control for testing.

10 (f) The court may award reasonable costs of the suit, attorneys'  
11 fees, and the costs of necessary expert witnesses to a prevailing  
12 plaintiff. The court may award reasonable costs of the suit and  
13 attorneys' fees to a prevailing defendant if the court finds that the  
14 plaintiff commenced or prosecuted the suit pursuant to this section  
15 in bad faith or solely for purposes of harassing the defendant.

16 (g) This section does not prohibit a person from bringing an  
17 action for damages caused by oil or by exploration, under any  
18 other provision or principle of law, including, but not limited to,  
19 common law. However, damages shall not be awarded pursuant  
20 to this section to an injured person for loss or injury for which the  
21 person is or has been awarded damages under any other provision  
22 or principle of law. Subdivision (b) does not create a defense not  
23 otherwise available regarding an action brought under any other  
24 provision or principle of law, including, but not limited to, common  
25 law.

26 (h) Damages for which responsible parties are liable under this  
27 section include the following:

28 (1) All costs of response, containment, cleanup, removal, and  
29 treatment, including, but not limited to, monitoring and  
30 administration costs incurred pursuant to the California oil spill  
31 contingency plan or actions taken pursuant to directions by the  
32 administrator.

33 (2) Injury to, or economic losses resulting from destruction of  
34 or injury to, real or personal property, which shall be recoverable  
35 by any claimant who has an ownership or leasehold interest in  
36 property.

37 (3) Injury to, destruction of or loss of, natural resources,  
38 including, but not limited to, the reasonable costs of rehabilitating  
39 wildlife, habitat, and other resources and the reasonable costs of  
40 assessing that injury, destruction, or loss, in an action brought by

1 the state, a county, city, or district. Damages for the loss of natural  
2 resources may be determined by any reasonable method, including,  
3 but not limited to, determination according to the costs of restoring  
4 the lost resource.

5 (4) Loss of subsistence use of natural resources, which shall be  
6 recoverable by a claimant who so uses natural resources that have  
7 been injured, destroyed, or lost.

8 (5) Loss of taxes, royalties, rents, or net profit shares caused by  
9 the injury, destruction, loss, or impairment of use of real property,  
10 personal property, or natural resources.

11 (6) Loss of profits or impairment of earning capacity due to the  
12 injury, destruction, or loss of real property, personal property, or  
13 natural resources, which shall be recoverable by any claimant who  
14 derives at least 25 percent of his or her earnings from the activities  
15 that utilize the property or natural resources, or, if those activities  
16 are seasonal in nature, 25 percent of his or her earnings during the  
17 applicable season.

18 (7) Loss of use and enjoyment of natural resources, public  
19 beaches, and other public resources or facilities, in an action  
20 brought by the state, a county, city, or district.

21 (i) Except as provided in Section 1431.2 of the Civil Code,  
22 liability under this section shall be joint and several. However, this  
23 section does not bar a cause of action that a responsible party has  
24 or would have, by reason of subrogation or otherwise, against a  
25 person.

26 (j) This section does not apply to claims for damages for  
27 personal injury or wrongful death, and does not limit the right of  
28 a person to bring an action for personal injury or wrongful death  
29 pursuant to any provision or principle of law.

30 (k) Payments made by a responsible party to cover liabilities  
31 arising from a discharge of oil, whether under this division or any  
32 other provision of federal, state, or local law, shall not be charged  
33 against royalties, rents, or net profits owed to the United States,  
34 the state, or any other public entity.

35 (l) An action that a private or public individual or entity may  
36 have against a responsible party under this section may be brought  
37 directly by the individual or entity or by the state on behalf of the  
38 individual or entity. However, the state shall not pursue an action  
39 on behalf of a private individual or entity that requests the state  
40 not to pursue that action.

1 (m) For purposes of this section, “vessels” means vessels as  
2 defined in Section 21 of the Harbors and Navigation Code.

3 SEC. 10. Section 8670.56.6 of the Government Code is  
4 amended to read:

5 8670.56.6. (a) (1) Except as provided in subdivisions (b) and  
6 (d), and subject to subdivision (c), a person, including, but not  
7 limited to, an oil spill response organization, its agents,  
8 subcontractors, or employees, shall not be liable under this chapter  
9 or the laws of the state to any person for costs, damages, or other  
10 claims or expenses as a result of actions taken or omitted in good  
11 faith in the course of response efforts.

12 (2) The qualified immunity under this section shall not apply  
13 to any response efforts that are inconsistent with the following:

14 (A) The directions of the unified command, consisting of at  
15 least the Coast Guard and the administrator.

16 (B) In the absence of a unified command, the directions of the  
17 administrator pursuant to Section 8670.27.

18 (C) In the absence of directions pursuant to subparagraph (A)  
19 or (B), applicable oil spill contingency plans implemented under  
20 this division.

21 (3) This section does not, in any manner or respect, affect or  
22 impair any cause of action against or any liability of any party or  
23 parties responsible for the spill, for the discharged oil, or for the  
24 vessel, terminal, pipeline, or facility from which the oil was  
25 discharged. The responsible party or parties shall remain liable for  
26 any and all damages arising from the discharge, including damages  
27 arising from improperly carried out response efforts, as otherwise  
28 provided by law.

29 (b) This section does not, in any manner or respect, affect or  
30 impair any cause of action against or any liability of any party or  
31 parties responsible for the spill, or the responsible party’s agents,  
32 employees, or subcontractors, except persons immunized under  
33 subdivision (a) for response efforts, for the discharged oil, or for  
34 the vessel, terminal, pipeline, or facility from which the oil was  
35 discharged.

36 (c) The responsible party or parties shall be subject to both of  
37 the following:

38 (1) Notwithstanding subdivision (b) or (i) of Section 8670.56.5,  
39 or any other law, be strictly and jointly and severally liable for all  
40 damages arising pursuant to subdivision (h) of Section 8670.56.5

1 from the response efforts of its agents, employees, subcontractors,  
2 or an oil spill response organization of which it is a member or  
3 with which it has a contract or other arrangement for cleanup of  
4 its oil spills, unless it would have a defense to the original spill.

5 (2) Remain strictly liable for any and all damages arising from  
6 the response efforts of a person other than a person specified in  
7 paragraph (1).

8 (d) This section does not immunize an oil spill response  
9 organization or any other person from liability for acts of gross  
10 negligence or willful misconduct in connection with response  
11 efforts.

12 (e) This section does not apply to any action for personal injury  
13 or wrongful death.

14 (f) [Reserved]

15 (g) Except for the responsible party, membership in an oil spill  
16 response organization shall not be grounds, in and of itself, for  
17 liability resulting from response efforts of the oil spill response  
18 organization.

19 (h) For purposes of this section, there shall be a rebuttable  
20 presumption that an act or omission described in subdivision (a)  
21 was taken in good faith.

22 (i) In any situation in which immunity is granted pursuant to  
23 subdivision (a) and a responsible party is not liable, is not liable  
24 for noneconomic damages caused by another, or is partially or  
25 totally insolvent, the fund provided for in Article 7 (commencing  
26 with Section 8670.46) shall reimburse, in accordance with its terms,  
27 claims of any injured person for which a person who is granted  
28 immunity pursuant to this section would otherwise be liable.

29 (j) (1) The immunity granted by this section shall only apply  
30 to response efforts that are undertaken after the administrator  
31 certifies that contracts with *persons who are* qualified and  
32 responsible ~~contractors~~ are in place to ensure an adequate and  
33 expeditious response to any foreseeable oil spill that may occur in  
34 waters of the state for which the responsible party (A) cannot be  
35 identified or (B) is unable or unwilling to respond, contain, and  
36 clean up the oil spill in an adequate and timely manner. In  
37 negotiating these contracts, the administrator shall procure, to the  
38 maximum extent practicable, the services of persons who are  
39 willing to respond to oil spills with no, or lesser, immunity than  
40 that conferred by this section, but, in no event, a greater immunity.

1 The administrator shall make the certification required by this  
2 subdivision on an annual basis. Upon certification, the immunity  
3 conferred by this section shall apply to all response efforts  
4 undertaken during the calendar year to which the certification  
5 applies. In the absence of the certification required by this  
6 subdivision, the immunity conferred by this section shall not attach  
7 to any response efforts undertaken by any person in waters of the  
8 state.

9 (2) In addition to the authority to negotiate contracts described  
10 in paragraph (1), the administrator may also negotiate and enter  
11 into indemnification agreements with *persons who are* qualified  
12 and financially responsible ~~contractors~~ to respond to oil spills that  
13 may occur in waters of the state for which the responsible party  
14 (A) cannot be identified or (B) is unable or unwilling to respond,  
15 contain, and clean up the oil spill in an adequate and timely manner.

16 (3) The administrator may indemnify response contractors for  
17 (A) all damages payable by means of settlement or judgment that  
18 arise from response efforts to which the immunity conferred by  
19 this section would otherwise apply, and (B) reasonably related  
20 legal costs and expenses incurred by the responder, provided that  
21 indemnification shall only apply to response efforts undertaken  
22 after the expiration of any immunity that may exist as the result  
23 of the contract negotiations authorized in this subdivision. In  
24 negotiating these contracts, the administrator shall procure, to the  
25 maximum extent practicable, the services of persons who are  
26 willing to respond to oil spills with no, or as little, right to  
27 indemnification as possible. All indemnification shall be paid by  
28 the administrator from the Oil Spill Response Trust Fund.

29 (4) (A) The contracts required by this section, and any other  
30 contracts entered into by the administrator for response,  
31 containment, or cleanup of an existing spill, or for response of an  
32 imminent threat of a spill, the payment of which is to be made  
33 from the Oil Spill Response Trust Fund created pursuant to Section  
34 8670.46, shall be exempt from Part 2 (commencing with Section  
35 10100) of Division 2 of the Public Contract Code and Article 6  
36 (commencing with Section 999) of Chapter 6 of Division 4 of the  
37 Military and Veterans Code.

38 (B) The exemption specified in subparagraph (A) applies only  
39 to contracts for which the services are used for a period of less  
40 than 90 days, cumulatively, per year.

1 (C) This paragraph shall not be construed as limiting the  
2 administrator's authority to exercise the emergency powers granted  
3 pursuant to subdivision (c) of Section 8670.62, including the  
4 authority to enter into emergency contracts that are exempt from  
5 approval by the Department of General Services.

6 (k) (1) With regard to a person who is regularly engaged in the  
7 business of responding to oil spills, the immunity conferred by  
8 this section shall not apply to any response efforts by that person  
9 that occur later than 60 days after the first day the person's response  
10 efforts commence.

11 (2) Notwithstanding the limitation contained in paragraph (1),  
12 the administrator may extend, upon making all the following  
13 findings, the period of time, not to exceed 30 days, during which  
14 the immunity conferred by this section applies to response efforts:

15 (A) Due to inadequate or incomplete containment and  
16 stabilization, there exists a substantial probability that the size of  
17 the spill will significantly expand and (i) threaten previously  
18 uncontaminated resources, (ii) threaten already contaminated  
19 resources with substantial additional contamination, or (iii)  
20 otherwise endanger the public health and safety or harm the  
21 environment.

22 (B) The remaining work is of a difficult or perilous nature that  
23 extension of the immunity is clearly in the public interest.

24 (C) No other qualified and financially responsible contractor is  
25 prepared and willing to complete the response effort in the absence  
26 of the immunity, or a lesser immunity, as negotiated by contract.

27 (3) The administrator shall provide five days' notice of his or  
28 her proposed decision to either extend, or not extend, the immunity  
29 conferred by this section. Interested parties shall be given an  
30 opportunity to present oral and written evidence at an informal  
31 hearing. In making his or her proposed decision, the administrator  
32 shall specifically seek and consider the advice of the relevant Coast  
33 Guard representative. The administrator's decision to not extend  
34 the immunity shall be announced at least 10 working days before  
35 the expiration of the immunity to provide persons an opportunity  
36 to terminate their response efforts as contemplated by paragraph  
37 (4).

38 (4) A person or their agents, subcontractors, or employees shall  
39 not incur any liability under this chapter or any other provision of  
40 law solely as a result of that person's decision to terminate their

1 response efforts because of the expiration of the immunity  
2 conferred by this section. A person's decision to terminate response  
3 efforts because of the expiration of the immunity conferred by this  
4 section shall not in any manner impair, curtail, limit, or otherwise  
5 affect the immunity conferred on the person with regard to the  
6 person's response efforts undertaken during the period of time the  
7 immunity applied to those response efforts.

8 (5) The immunity granted under this section shall attach, without  
9 the limitation contained in this subdivision, to the response efforts  
10 of any person who is not regularly engaged in the business of  
11 responding to oil spills. A person who is not regularly engaged in  
12 the business of responding to oil spills includes, but is not limited  
13 to, (A) a person who is primarily dedicated to the preservation and  
14 rehabilitation of wildlife and (B) a person who derives his or her  
15 livelihood primarily from fishing.

16 SEC. 11. Section 8670.59 of the Government Code is amended  
17 to read:

18 8670.59. (a) Any civil action brought pursuant to this chapter,  
19 or pursuant to Division 7.8 (commencing with Section 8750) of  
20 the Public Resources Code, shall be brought in the county in which  
21 the spill, discharge, or violation occurred, the county in which the  
22 principal place of business of the defendant is located, or the county  
23 in which the defendant is doing business in this state.

24 (b) (1) Notwithstanding any other provision of law, all criminal  
25 actions for the prosecution of misdemeanor violations of this  
26 chapter or Division 7.8 (commencing with Section 8750) of the  
27 Public Resources Code shall be commenced within one year from  
28 the date of the discovery of the facts or circumstances that  
29 constitute the violation.

30 (2) Notwithstanding any other provision of law, all criminal  
31 actions for the prosecution of felony violations of this chapter or  
32 Division 7.8 (commencing with Section 8750) of the Public  
33 Resources Code shall be commenced within three years from the  
34 date of the discovery of the facts or circumstances that constitute  
35 the violation.

36 (c) Notwithstanding any other provision of law, except as  
37 provided in subdivision (d), any action to recover civil damages  
38 or penalties shall be commenced within three years from the date  
39 of discovery of the facts or circumstances that constitute a violation



1 of this chapter or Division 7.8 (commencing with Section 8750)  
2 of the Public Resources Code.

3 (d) Any action to recover civil damages or penalties pursuant  
4 to paragraph (3), (4), (5), (6), or (7) of subdivision (h) of Section  
5 8670.56.5 because of effects on natural resources shall be  
6 commenced within five years from the date of the discovery of  
7 the facts or circumstances that are the basis for the cause of action.

8 (e) Any action to compel the removal of oil or the restoration  
9 and rehabilitation of wildlife and wildlife habitat shall be  
10 commenced within five years from the date of discovery of the  
11 facts or circumstances that constitute a violation of this chapter or  
12 Division 7.8 (commencing with Section 8750) of the Public  
13 Resources Code.

14 (f) For purposes of subdivisions (b), (c), (d), and (e), “date of  
15 discovery” means the actual date that facts sufficient to establish  
16 that a violation of this chapter or Division 7.8 (commencing with  
17 Section 8750) of the Public Resources Code has occurred are  
18 discovered by a peace officer appointed pursuant to Section 851  
19 of the Fish and Game Code.

20 (g) The administrator may adopt regulations prescribing  
21 procedures for the implementation of this section.